IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 329 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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A.S.SONI

Versus

M/S.NATIONAL TYRES

Appearance:

1. Criminal Appeal No. 329 of 1995

MR PRASHANT G DESAI for Petitioner No. 1

MR RR MARSHALL for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 10/08/2001

ORAL JUDGEMENT

1. This appeal is filed by the Public Officer of Surat Municipal Corporation against the judgement and order of acquittal dated 30.05.1994 passed by the learned

J.M.F.C. Surat in Municipal Case No.591/92, whereby the learned Magistrate acquitted the respondent - accused for the offences under 28 (1), 28 (2))C) of Octroi Rules, on the technical ground of power of delegation not vested in the complainant Officer for filing the complaint against the respondent - accused for the aforesaid offences.

2. Power of delegation to file complaint was already there but inadvertently it could not be produced on record before the learned Magistrate. Therefore, the learned Magistrate in paragraph 7 of the judgement observed that the complainant was not empowered to file complaint in absence of proper delegation of power.

3. On 30.03.1995, leave was granted and appeal was admitted by the learned Single Judge of this Court and the matter was fixed for hearing on 12.12.1995. Unfortunately, for more than six years it could not be heard till today due to some or the other reason.

4. It also appears from the record of this appeal that Criminal Miscellaneous Application No. 608/1996 was filed in this appeal by the Corporation for producing the order passed by the Commissioner delegating power to the complainant in the form of an additional evidence. The said application was granted on 13.12.1996 after hearing the learned Counsel for the respondent - accused.

5. Thus, there is already an order of delegation of power on the record of this case. In view of the aforesaid order, learned Counsel Shri. Marshall for the respondent - accused was not in a position to defend the order of acquittal passed by the learned Magistrate. However, he submitted that looking to the peculiar facts and circumstances of the case, and that the offence was of a trival nature, and only a technical breach was committed by the respondent - accused that too way back in 1991, therefore, to ask the accused to face the trial de-novo after more than ten years would not be in the interest of justice. Learned Counsel Shri. Desai appearing for the appellant Corporation has also not seriously pressed for remanding the matter to the Trial Court as his main goal was achieved because the learned Magistrate has wrongly acquitted the accused and the Corporation was much worried about the acquittal wrongly recorded by the Trial Court. The very fact that the respondent - accused have to come to this Court and for all this years, the hanging sword was, on them, by way of pendency of this appeal itself is more than sufficient punishment to them. Mr. Marshall for the respondent accused has assured this Court that in future the

respondent accused shall not commit such offences.

6. In view of the above, it is held that the learned Judge was wrong in observing in paragraph 7 of his judgment, that there was no delegation of power. Once it is held that the learned Judge was wrong in acquitting the accused on the aforesaid ground, then in ordinary circumstances, the order of acquittal would have been set aside and the matter would have been remanded to the Trial Court. However, considering the peculiar facts and circumstances of the case I am of the considered opinion that ends of justice would be served by declaring that the learned Magistrate was wrong in coming to the aforesaid conclusion. However there is no question of remanding the matter to the Trial Court after so many years. Accordingly, this appeal is disposed of.

(B.J. SHETHNA,J.)

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